

Message Text

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P 172040Z JUL 75

FM AMEMBASSY OTTAWA

TO SECSTATE WASHDC PRIORITY 7004

C O N F I D E N T I A L SECTION 1 OF 2 OTTAWA 2681

POUCHED TO ALL CONSULATES IN CANADA AS INFO

E.O. 11652: GDS

TAGS: EINV, CA, ENRG, ETRD

SUBJ: INVESTMENT: IMPLEMENTATION OF SECOND PHASE,
FOREIGN INVESTMENT REVIEW ACT

1. ON JULY 17, 1975, FIRA COMMISSIONER R. MURRAY CALLED IN ECON COUNSELOR TO BRIEF HIM ON GOC DECISION TO IMPLEMENT PHASE II OF FOREIGN INVESTMENT REVIEW ACT, RELATING TO NEW INVESTMENT AND EXPANSION OF EXISTING FOREIGN-CONTROLLED FIRMS INTO UNRELATED ACTIVITIES IN CANADA. MEETING ALSO ATTENDED BY MEYERS OF EMBASSY, G. DEWHIRST, DIRECTOR, FIRA RESEARCH AND ANALYSIS BRANCH, AND G. THOMSON OF EXTAFF RESOURCES AND INVESTMENT SECTION.

2. MURRAY SAID ANNOUNCEMENT OF DECISION WILL BE MADE BY ITC MINISTER GILLESPIE IN PARLIAMENT ON JULY 18. HE REQUESTED EMBASSY KEEP INFORMATION CONFIDENTIAL UNTIL THAT TIME. CANADIAN EMBASSY WASHINGTON IS EXPECTED TO BRIEF RESPONSIBLE DEPARTMENT OFFICERS AFTERNOON OF JULY 17. MURRAY SAID USG WAS ONLY FOREIGN GOVERNMENT RECEIVING BRIEFING 24 HOURS IN ADVANCE OF ANNOUNCEMENT; THIS IS IN RECOGNITION OF EXTREMELY LARGE U.S. INVESTMENT POSITION IN
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CANADA AND CONSEQUENT U.S. INTEREST IN IMPACT OF NEW

GUIDELINES.

3. CONTRARY TO NEWSPAPER REPORTS, MURRAY STATED, THERE WAS "NO DIVISION IN CABINET" OVER DECISION TO PROCEED WITH IMPLEMENTATION PHASE II. HE HAD ATTENDED CABINET MEETING CONCERNED WITH SUBJECT AT WHICH ALL "25 MINISTER AGREED" THAT DECISION WAS CORRECT. MURRAY SAID THAT GOC'S ORIGINAL INTENTION WAS TO IMPLEMENT DECISION BEFORE BEGINNING OF 1975, BUT IT WAS NECESSARY TO OBTAIN PROVINCIAL AGREEMENT AND INTERAGENCY ACCORD ON PHASE II GUIDELINES. SIX MONTHS EXTENSION GAVE FIRA TIME TO SIMPLIFY GUIDELINES AND CONSULT ON THEIR EFFICACY WITH LEADING CANADIAN LAW FIRMS, LARGE CHARTERED ACCOUNTANT COMPANIES, AND SOME MULTINATIONAL FIRMS IN CANADA, INCLUDING DUPONT.

4. EFFECTIVE DATE OF PHASE II IMPLEMENTATION WILL BE OCTOBER 15; AND COMPANIES IN MIDST OF NEW INVESTMENT OR EXPANSION PROGRAMS WILL HAVE TIME TO FINALIZE THEIR PLANNING BEFORE THAT DATE. ACCORDING TO MURRAY, ALL RPT ALL NEW INVESTMENT AND EXPANSION OF FIRMS INTO UNRELATED ACTIVITIES, REGARDLESS OF SIZE OF TRANSACTION, WILL BE SUBJECT TO FIRA SCREENING AND CURRENT THRESHOLD LEVELS FOR TAKEOVER PROPOSALS (OVER C\$250,000 IN ASSETS AND GROSS REVENUE OF C\$3 MILLION) WILL BE ELIMINATED (SINGLE EXCEPTION TO ELIMINATION OF TAKEOVER THRESHOLD WILL BE COMPANIES ALREADY IN BUSINESS IN CANADA TAKING OVER RELATED BUSINESSES).

5. SINCE EXPANSION OF EXISTING FOREIGN-CONTROLLED FIRMS INTO UNRELATED ACTIVITY WAS MOST COMPLEX PROBLEM OF PHASE II, MURRAY CONCENTRATED HIS REMARKS ON GUIDELINES COVERING THIS QUESTION. HE SAID GOC DECISION WAS MADE TO "DEFINE GUIDELINES IN TERMS OF AREAS OF RELATEDNESS". RATHER THAN DESCRIBE WHAT FIELDS WERE NOT RELATED. ON BASIS OF GUIDELINES, MURRAY MAINTAINED, MOST COMPANIES WILL BE ABLE TO ASCERTAIN WHETHER OR NOT THEY MAY PROCEED WITHOUT REFERENCE TO FIRA OR ARE SUBJECT TO FIRA SCREENING. GUIDELINES ARE SUFFICIENTLY BROAD AND WELL-EXPLAINED IN CONFIDENTIAL

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ANNOTATIONS TO INFORMATION MATERIAL BEING MADE PUBLIC THAT MOST BUSINESSES SHOULD HAVE FEW PROBLEMS DETERMINING RELATED OR UNRELATED ACTIVITIES. HE EMPHASIZED THAT HE DOES NOT RPT NOT EXPECT NEW RULES TO INTERFERE WITH NORMAL EXPANSION PLANS OF FOREIGN SUBS ALREADY ESTABLISHED IN CANADA.

6. IN ANSWER TO QUESTIONS:

(A) MURRAY ACKNOWLEDGED THAT PROCEDURES HAD NOT YET BEEN WORKED OUT TO POLICE PHASE II. HOWEVER, HE WAS CONFIDENT THAT, AS IN CASE OF TAKEOVER PROPOSALS, FOREIGN-CONTROLLED FIRMS WOULD NOT WANT TO RISK LOSING THEIR INVESTMENT IF GOC DECIDED TAKE THEM TO COURT FOR NONCOMPLIANCE. FIRMS THEREFORE WOULD FIND IT IN THEIR BEST INTERESTS TO COMPLY WITH RULES AND BRING EXPANSION PLANS TO FIRA IF THEY HAD ANY DOUBT RE GUIDELINES COVERING THEIR PROJECTED EXPANSION.

(B) OPERATIVE PHRASE FOR SCREENING NEW INVESTMENT WAS "ESTABLISHMENT OF A BUSINESS IN CANADA", THEREFORE SCREENING WILL EXTEND TO EVEN SMALLEST OPERATIONS, INCLUDING SUCH ENTITIES AS REPRESENTATIVE OFFICES CURRENTLY BEING SET UP IN SOME NUMBERS BY FOREIGN BANKS. MURRAY POINTED OUT THAT UNLESS THIS WERE DONE, FOREIGN INVESTORS COULD GET AROUND REQUIREMENTS BY ESTABLISHING SMALL OFFICE AND ONCE ESTABLISHED EXPAND INTO RELATED ACTIVITIES WITHOUT LIMIT. MURRAY AGREED SUCH INTERPRETATION OF ACT WOULD BE ONEROUS FOR FIRA, AND IT MIGHT TAKE YEAR'S EXPERIENCE BEFORE ADMINISTRATION CHANGES COULD BE MADE TO SIMPLIFY PROCESS.

7. FIRA AND EXSTAFF OFFICIALS ASSURED ECON COUNSELOR THAT COMPLETE INFORMATION KITS ON PHASE II IMPLEMENTATION WOULD BE PROVIDED TO THE DEPARTMENT BY CANADIAN EMBASSY WASHINGTON.

8. FOLLOWING IS TEXT OF FIRA NEWS RELEASE FOR JULY 18 (NO RPT NO UNCLASSIFIED DISSEMINATION UNTIL AFTER CONFIDENTIAL

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2 PM, JULY 18):

BEGIN QUOTE

PHASE II OF THE FOREIGN INVESTMENT REVIEW ACT, THE NEW INVESTMENT PROVISIONS OF THE ACT, WILL COME INTO EFFECT ON OCTOBER 15 OF THIS YEAR. IN MAKING THE ANNOUNCEMENT IN THE HOUSE OF COMMONS TODAY THE HONORABLE ALASTAIR GILLESPIE, THE MINISTER RESPONSIBLE FOR THE ACT, EMPHASIZED THAT "THE PURPOSE OF THE FOREIGN INVESTMENT REVIEW ACT IS NOT TO BLOCK FOREIGN INVESTMENT FROM ANY SOURCE OR TO DISCOURAGE IT, BUT RATHER TO ENSURE THAT SUCH INVESTMENT IS OF SIGNIFICANT BENEFIT TO CANADA. SINCE ITS BEGINNINGS CANADA HAS HAD TO RELY HEAVILY ON FOREIGN INVESTMENT TO HELP

US DEVELOP THIS COUNTRY. AND WE SHALL CONTINUE TO
NEED A GREAT DEAL MORE INVESTMENT IN CANADA BY OUR
FRIENDS ABROAD IF WE ARE TO DEVELOP OUR FULL
POTENTIAL."

HE ALSO SAID THAT THE THREE MONTH LEAD-TIME
"WILL GIVE INVESTORS AND THEIR ADVISORS THE NECESSARY
OPPORTUNITY TO BECOME FAMILIAR WITH THE PHASE II
GUIDELINES AND REGULATIONS, AND WILL AVOID DISRUPTION
TO INVESTMENT PLANS WHICH ARE NOW BEING DEVELOPED.
INVESTMENTS WHICH ARE UNDERWAY ON OCTOBER 15 ARE NOT
REVIEWABLE UNDER THE ACT TO THE EXTENT THAT THEY ARE
ESTABLISHED BUSINESSES. TO SHOW THAT A BUSINESS WAS
ALREADY ESTABLISHED BY OCTOBER 15 IT WILL NOT BE
NECESSARY TO SHOW THAT THE BUSINESS WAS FULLY
OPERATIONAL ON THAT DATE. WHERE THERE ARE ONE OR MORE
EMPLOYEES, TOGETHER WITH CONTRACTUAL OBLIGATIONS OR
OTHER DEFINITE COMMITMENTS RELATING TO THE NEW
BUSINESS, THOSE FACTORS SHOULD BE ENOUGH TO SHOW
THAT THE NEW BUSINESS HAS BEEN ESTABLISHED AND IS
THEREFORE NOT SUBJECT TO REVIEW."

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TO SECSTATE WASHDC PRIORITY 7005

C O N F I D E N T I A L SECTION 2 OF 2 OTTAWA 2681

PHASE I OF THE ACT RELATING TO TAKEOVERS OF
CANADIAN BUSINESSES BY NON-CANADIANS WAS PROCLAIMED
ON APRIL 9, 1974. TO THE END OF JUNE THIS YEAR THE

FOREIGN INVESTMENT REVIEW AGENCY HAD REVIEWED 141 APPLICATION FOR TAKEOVERS OF CANADIAN BUSINESSES AND A FURTHER 44 APPLICATIONS WERE UNDER REVIEW. IN ADDITION, APPROXIMATELY 70 APPLICATIONS HAD BEEN EXAMINED BY THE AGENCY AND FOUND TO BE NOT SUBJECT TO REVIEW UNDER THE ACT. OF THE 141 REVIEWED CASES, 24 WERE WITHDRAWN. OF THOSE 115 (SIC), 22 WERE WITHDRAWN, FOR A VARIETY OF REASONS, WHILE THEY WERE BEING REVIEWED. OF THE REMAINING 117, 95 TAKEOVER APPLICATIONS WERE ALLOWED TO GO AHEAD, AND 22 WERE DISALLOWED. IN OTHER WORDS, OF EVERY FIVE APPLICATIONS WHICH HAVE COME FORWARD FOR GOVERNMENT CONSIDERATION, FOUR HAVE BEEN ALLOWED AND ONE HAS BEEN DISALLOWED. THE SIGNIFICANT BENEFITS TO CANADA INVOLVED IN THE TRANSACTIONS ALLOWED BY THE GOVERNMENT INCLUDE THE CREATION OF BETWEEN 8,000 AND 9,000 NEW JOBS AND OVER \$500 MILLION IN NEW INVESTMENT.

THE MINISTER RECALLED THAT WHEN THE FOREIGN INVESTMENT REVIEW BILL WAS BEFORE PARLIAMENT HE "UNDERTOOK, ON BEHALF OF THE GOVERNMENT, THAT THE CONFIDENTIAL

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SECOND PART OF THE ACT, (PHASE II), RELATING TO THE ESTABLISHMENT OF NEW FOREIGN-CONTROLLED BUSINESSES IN CANADA, WOULD NOT COME INTO FORCE UNTIL THE GOVERNMENT WAS SATISFIED ON TWO SCORES. THE FIRST WAS THAT THE GOVERNMENT SHOULD HAVE GAINED SOME EXPERIENCE IN THE ACTUAL ADMINISTRATION OF THE REVIEW PROCESS UNDER PHASE I. WE HAVE NOW HAD WELL OVER A YEAR'S EXPERIENCE AND WE ARE SATISFIED THAT THE REVIEW PROCESS IS WORKING WELL. THE OTHER COMMITMENT WAS THAT PHASE II WOULD NOT BE INTRODUCED UNTIL THERE HAD BEEN FURTHER CONSULTATIONS WITH THE PROVINCIAL GOVERNMENTS. DURING THE PAST YEAR, THERE HAVE BEEN SEVERAL MEETINGS WITH REPRESENTATIVES OF ALL THE PROVINCIAL GOVERNMENTS. THOSE MEETINGS HAVE INVOLVED VERY FULL DISCUSSIONS ON THE ADMINISTRATIVE PROCEDURES FOR CONSULTATION, ON INDIVIDUAL CASES, BETWEEN THE FEDERAL AND PROVINCIAL AUTHORITIES, AND I AM PLEASED TO SAY THAT THERE IS GENERAL AGREEMENT THAT THE PROCEDURES WHICH HAVE EVOLVED ARE SOUND AND WORKMANLIKE."

MR. GILLESPIE ALSO SAID THAT THE PROCEDURES OF CONSULTATION WITH THE PROVINCES WOULD CONTINUE UNDER PHASE II. HE SAID THAT THE GOVERNMENT WOULD ENSURE "THERE IS EFFECTIVE CO-ORDINATION BETWEEN FOREIGN INVESTMENT REVIEW AGENCY AND OTHER DEPARTMENTS AND AGENCIES OF THE FEDERAL GOVERNMENT." IN THIS REGARD, HE ADVISED INVESTORS WHO INTEND TO APPLY FOR DREE

INCENTIVE GRANTS AND WHOSE INVESTMENT PROPOSALS ARE ALSO SUBJECT TO REVIEW UNDER THE FOREIGN INVESTMENT REVIEW ACT, TO DISCUSS THEIR PLANS FIRST WITH DREE. HE SAID, "THERE WILL BE NO UNNECESSARY DELAY, THROUGH DUPLICATION OF ADMINISTRATIVE PROCEDURES, IN THE EVALUATION OF INVESTMENT PROGRAMS IMPORTANT TO THE DEVELOPMENT OF DESIGNATED REGIONS OF THE COUNTRY."

THE MINISTER TABLED REGULATIONS WHICH PRESCRIBE THE FORM OF NOTICE THAT MUST BE GIVEN TO THE AGENCY WHEN A NEW FOREIGN-CONTROLLED BUSINESS IS BEING ESTABLISHED, AND A SERIES OF "GUIDELINES CONCERNING RELATED BUSINESS" DESIGNED TO HELP FOREIGN-CONTROLLED BUSINESSES ALREADY ESTABLISHED IN CANADA IN

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DETERMINING WHETHER OR NOT THEIR DIVERSIFICATION PLANS ARE SUBJECT TO REVIEW BY THE AGENCY. PHASE II OF THE ACT REQUIRES THE ESTABLISHMENT OF AN UNRELATED BUSINESS TO BE REVIEWED FOR SIGNIFICANT BENEFIT TO CANADA. "GREAT CARE HAS BEEN EXERCISED TO ENSURE THAT THERE WILL BE NO INTERFERENCE WITH INVESTMENT FOR THE MAINTENANCE AND EXPANSION OF ONGOING BUSINESS ACTIVITIES IN CANADA. THIS WAS CLEARLY PARLIAMENT'S INTENTION WHEN THE ACT WAS PASSED INTO LAW," SAID MR. GILLESPIE.

THE GUIDELINES LAY DOWN SIX PRINCIPLES BY WHICH A NEW BUSINESS UNDERTAKEN BY AN ESTABLISHED FOREIGN-CONTROLLED BUSINESS IN CANADA WILL BE CONSIDERED TO BE RELATED, AND THUS FREE FROM REVIEW. ESSENTIALLY, GUIDELINES 1 AND 2 CONSIDER VERTICAL INTEGRATION (BOTH BACKWARD TOWARDS RAW MATERIALS OR FORWARD TOWARDS DISTRIBUTION) A RELATED ACTIVITY. MANUFACTURING A SUBSTITUTE PRODUCT FOR AN OLD LINE QUALIFIES UNDER GUIDELINE 3. A NEW BUSINESS PROVIDING NEW PRODUCTS WITH ESSENTIALLY THE SAME TECHNOLOGY AND PRODUCTION PROCESSES USED IN THE OLD BUSINESS WOULD ALSO BE RELATED. FOREIGN-CONTROLLED BUSINESSES NOW IN CANADA ARE ASSURED BY GUIDELINE 5 OF FREEDOM TO BRING TO MARKET, WITHOUT FIRA ASSESSMENT, NEW PRODUCTS RESULTING FROM RESEARCH AND DEVELOPMENT CARRIED OUT BY THEIR COMPANIES IN CANADA. THE SIXTH AND LAST GUIDELINE PROVIDES FOR RELATEDNESS BETWEEN AN ESTABLISHED BUSINESS AND A NEW BUSINESS ON THE BASIS OF THEIR INDUSTRIAL CLASSIFICATION.

MR. GILLESPIE ALSO REFERRED TO THE GOVERNMENT'S POLICY OF LIMITING NON-RESIDENT OWNERSHIP IN THE URANIUM INDUSTRY. HE SAID: "THE GOVERNMENT IS

CONSIDERING ALTERNATIVE MEASURES TO CONSOLIDATE THIS
POLICY WITH RESPECT TO THE OWNERSHIP OF URANIUM MINES
WITH THE GENERAL GAMBIT OF OUR POLICY REGARDING
FOREIGN OWNERSHIP AND CONTROL OF THE CANADIAN ECONOMY."

THE MINISTER ALSO ISSUED NEW PRINCIPLES OF
INTERNATIONAL BUSINESS CONDUCT REPLACING AND UP-
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DATING THE "GUIDING PRINCIPLES OF GOOD CORPORATE
BEHAVIOR IN CANADA" WHICH WERE ANNOUNCED BY THE LATE
HONOURABLE ROBERT WINTERS ON MARCH 31, 1966. AT A
PRESS CONFERENCE FOLLOWING HIS STATEMENT IN THE HOUSE
MR. GILLESPIE EXPLAINED THAT WHILE THESE NEW PRINCIPLES
WERE NOT DIRECTLY RELATED TO THE ADMINISTRATION OF THE
FOREIGN INVESTMENT REVIEW ACT THEY WILL HELP TO ANSWER
THE QUESTIONS OF THOSE FOREIGN INVESTORS WHO HAVE BEEN
ASKING WHAT DOES THE GOVERNMENT LOOK FOR IN ASSESSING
SIGNIFICANT BENEFIT TO CANADA. HE NOTED THAT INVESTORS
FROM ABROAD LIKE TO KNOW IN ADVANCE WHAT THE GROUND
RULES ARE. THE PRINCIPLES OF INTERNATIONAL BUSINESS
CONDUCT WILL HELP TO SPELL OUT WHAT CANADA EXPECTS OF
FOREIGN INVESTORS. END QUOTE. JOHNSON

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